The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

A EXAM ETHICS 2010

Institution **University of New Mexico School of Law**
Course **S10 750 Ethics -Sanders**

Instructor **NA**

Control Code **N/A**

Exam ID **943**

Count(s)	Word(s)	Char(s)	Char(s) (WS)
Section 1	**1018**	**5158**	**6178**
Section 2	**78**	**829**	**3947**
Section 3	**4789**	**116**	**1196**
Section 4	**5976**	**7190**	**118**
Section 5	**1207**	**5923**	**7132**
Section 6	**75**	**746**	**3489**
Section 7	**4237**	**98**	**970**

Answer-to-Question-_1_ 1.6 ?

Communication in the office

_____The communication in the office is going to be subject to attorney-client privilege, except for the underlying facts of the case because those are discoverable. Although she talked to you about other stuff, it appears as though she still discussed some issues of the case with you so they are protected under FRE 502. Under 502, attorney-client privilege means the protection that applicable law provides for confidential attorney-client communications. It is helpful to look at the proposed rule of 503 to expand upon this idea. Under proposed 503, communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client.

+2 Further, in the restatement, the attorney-client privilege means a communication made between privileged persons in confidence for the purposes of obtaining or providing legal assistance for that client (68). A privileged person is the client, the client's lawyer, agents of either who facilitate communications between them, and agents of the lawyer who facilitates representation. Both the lawyer and client are privileged in this situation.

In confidence in §68 means that if at the time and in the circumstances of the communication, the communication reasonably believes that no one will learn the contents of the communications except a privileged person or another privileged person with who, communications are protected under a similar privilege. Because the attorney and the client were the only two in the room, this would meet the requirements of in confidence.

For the purpose of representation means that the communication is made for the purposes of obtaining or providing legal assistance within the meaning of 68 if it is made to or to assit a person: who is a lawyer or who the client or prospective client reasonable beleives to be a lawyer; and whom the client or prospective client consults for the purposes of obtaining legal assistance. This requirement is met here because the facts state that she is your client and she is coming to you for representation in this case.

Thus, the communication in the office is subject to the attorney-client privilege.

Communication in restaurant (Before expert shows up)

The communication in the restaurant is a little more tricky because it raises the issue of whether this was in confidence or not. In confidence in §68 means that if at the time and in the circumstances of the communication, the communication reasonably believes that no one will learn the contents of the communications except a privileged person or another privileged person with who, communications are protected under a similar privilege.

Rule 1.0 defines reasonable as when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

Under these circumstances, was it reasonable for the lawyer to believe that by being in a noisy restaurant that requires both you and your client to speak loudly that no one will learn the contents of the communication? I would argue that it was unreasonable for the attorney to assume this and thus the privilege would be waived because there were unprivileged people who very well could have learned the contents of the case due to the lawyer and clients haveing to speak loudly.

This would be a different situation if the attorney had taken the client to a quiter restaurant where it wasn't necessary to speak loudly to be heard. Then it would be more intimate and less likely that unprivileged people would hear material information about the case.

However, if it were reasonable for the attorney to believe that no one would hear the conversation then the communication would be protected by the privilege.

But, based on the facts given, I would assert that it was unreasonable for the attorney to take the client to a loud restaurant to discuss the case and thus the privilege would be waived.

Communication in restaurant (While expert is there)

The communication about the case while the expert witness was present would not be protected by the attorney-client privilege because the expert witness was not someone who was facilitating the

communication between the lawyer and the client. Thus the privilege would be waived because they invited an unprivileged person to hear the facts about the case.

Not only is the privilege waived in the personal injury case, but the discussion of the other case in which the expert witness is testifying about is also waived because your client is not involved in that matter.

Photos

The photos are not going to be subject to attorney-client privilege or work-product. The +1 attorney-client privilege means a communication made between privileged persons in confidence for the purposes of obtaining or providing legal assistance for that client. Photos are not a communication (RSMI 68).

The photos are also not privileged under the work product doctrine (87) because they are not the +1 mental impressions of the attorney nor are they in an unwritten or oral form. The underlying facts of a case are not discoverable. The photos will be discoverable.

Rule 3.4 should also be looked at because it is fairness to opposing party and counsel. It would be unfair to keep these photos that show the facts of what the car looked like from the defendant merely because he did not have a camera at the time of the accident. Since this is a personal injury claim, you might argue that what the cars look like isn't relevant information so you don't have to automatically disclose these photos. However, if they are asked for in discovery, they are not going to be protected by any of the rules or restatements.

Other

It might be argued that the lawyer is not displaying the requisite competence that is required under Rule 1.1 because he is inviting unprivileged persons into the discussions of a case. The lawyer should have the requisite knowledge that by having the rest of the meeting in a noisy restaurant and subsequently inviting a non-privileged person into the discussion of the case will require waiver of the attorney-client

privilege.

9

Answer-to-Question-2

In this instance, it is important to remember that your loyalty is to your client not to your friend. You cannot disclose the Diet Kola (DK) information to her unless authorized to do so under Rule 1.6 because of confidentiality.

Rule 1.6 says that a lawyer SHALL NOT reveal info relating to representation of a client unless the clients gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or permitted by paragraph (b). If you wanted to tell your friend under 1.6(a), you would need to get the informed consent of your client. Informed consent, under 1.0, denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate info and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

In this situation, you wouldn't be able to tell your friend about the effects of DK unless you went and spoke to your client and got the informed consent, then came back and talked to her. Under this instance, you might be able to tell her a few days after the fact if your client has given informed consent. However, it is probably unlikely that your client will give their informed consent because it might cause hysteria if it leaks that DK causes miscarriages and limb deformation! They will probably tell you that there is not enough data on these situations to allow you to disclose this information. It would be adverse to their interests to allow you to tell your friend the *possible* side effects of DK.

The more likely issue the lawyer is looking at or not is times under 1.6(b) when a lawyer MAY reveal information. Under 1.6(b), a lawyer may reveal confidential information if disclosure is needed to represent the client, to prevent reasonably certain death or substantial injury, to prevent, mitigate, or rectify substantial injury to the financial interests or property of another in furtherance of which the client has used my services, to secure legal advice about my compliance with these rules, or to comply with

other law or a court order.

It is likely that she would look at rule 1.6(b)(1)--to prevent reasonably certain death or substantial bodily harm. The comments of this rule say that harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.

The issue becomes the imminency of the possible harm. From the facts we are given, it doesn't appear as if there is enough information to determine that death or bodily harm is reasonably certain. An increase in rats of 10% for limb deformities in their offspring is probably not enough to decide that the death or serious bodily harm is reasonably certain to occur. I would argue that it would need to be more than a 50% chance for it to be reasonable to occur. 10% has been said that it could be a statistical fluke.

In regards to the miscarriages, there is no data in the facts that suggests that DK causes miscarriages. There is merely data that says that women who took a medication that contained a substance *similar* to that of the sweetner in DK is not enough. It says that it is too limited to be statistically significant. There is no data on your client's DK causing miscarriages. Thereofore, 1.6(b)(1) would not apply in this situation because there is no threat of death or substantial bodily injury if no action is taken.

Under rule 1.1, the lawyer has to provide competent representation to their client. It would not be competent to tell all of my friends about the possibility of certain things happening if they drink something of my client's. I would not be competently representing my client if I disclosed confidential information to my friends

Further, if I were worried about being held liable for my client's product, under RSMT 66(3), I would not, solely by my inaction, subject to liability for damages to any third person My friend would not be able to sue me due to the fact that I didn't tell her about the *possible* effects of DK. As she is not my client, I do not necessarily owe her a duty.

Under these rules, although I might want to warn my friend about DK, I wouldn't be able to tell her without being subject to discipline under 8.4 because it is professional misconduct to violate or attempt to

violate the rules of professional conduct. In this instance, I would violating rule 1.6: confidentiality. At most, I could probably tell her that she shouldn't be drinking DK because caffeine isn't good for pregnant women!

I would be violating the rules of professional conduct if I told my friend about the possible effects of DK.

12

Answer-to-Question-3

Co-Workers

_____One issue in speaking the co-workers is whether or not they are represented. If they are represented by attorneys, then Rule 4.2 applies. 4.2 says that an attorney SHALL NOT communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

If the co-workers are unrepresented then rule 4.3 applies. 4.3 states that a lawyer SHALL NOT state or imply that the lawyer is disinterested. If the lawyer knows or reasonably knows that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. In addition, the lawyer SHALL NOT give legal advice to unrepresented persons, other than to secure legal advice, if the lawyer knows or should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

If the co-workers are represented either individually or by the organization, the attorney needs to talk to the co-workers attorneys in order to speak with the co-workers about the situation at hand. If it is not in regards to this subject, the attorney doesn't need the approval. If the attorney won't let you speak to the co-workers, it might be necessary to obtain a court order allowing you to speak to the co-workers. It is likely that you will be allowed to depose them because they may have relevant information in regard to the employment discrimination case because they worked with your client.

Under 4.3 in this situation, the last sentence specifically applies because it is quite possible that the co-workers don't think that the employee was discriminated against or it is against their interest to discuss

anything with the lawyer because it might affect their employment. If the co-workers are unrepresented, the lawyer should tread lightly. The attorney should make it more than clear that he is NOT their attorney and that he is NOT disinterested in the situation. His goal is to zealously advocate for his client, not for the co-worker.

Comment 8 of 4.2 states that the prohibition on communications with a represented person only applies in circumstances where the lawyers knows that the person is in fact represented in the matter to be discuseed. This means that the lawyer has actual knowledge of the fact of the representaiton; but such actual knowledge may be inferred from the situation. In a case involving people who work for a company, it is probably likely that the company as a whole is represented. Therefore, it would be reasonable to infer that they are probably represented. However, if for some reason it is not the case that company's in this city are represented, then it might be reasonable for the attorney to assume that they are in fact not represented.

Further, rule 1.13--organization as a client--states that the lawyer represents the organization as a whole, not each individual worker. Therefore, the company lawyer is not the personal representative of every worker in the company.

Since this is a case involving an organization, it is likely that the organization is represented by an attorney. Comment 7 of rule 4.2 deals with this situation. If the company is represented, the rule prohibits communications with a constituent of the company who supervises, directs, or regularly consults with the company's lawyer concerning the matter. The attorney would need to examine the hierarchy chart that the client provided them with because if these co-workers were supervisors, then the attorney is prohibited from speaking to them unless they get consent from their attorney. However, if they are not high up on the hierarchy, the conversation may be permitted if it is not someone who regularly meets with the company's lawyer and they don't discuss employment discrimination matters.

I would advise the attorney to err on the side of caution and assume that the company is represented and therefore you will have to contact their attorney to discuss this matter with the co-workers. The attorney for the company may want to be present for the interview and that is allowed. If the attorney

doesn't get the consent of their attorney if they are represented, then he will be subject to discpline under 8.4 for violating the rules of professional misconduct.

Former Supervisor

The same analysis applies as above as to whether or not you can speak to the supervisor. It turns on whether or not the supervisor is represented.

If the supervisor unrepresented then rule 4.3 applies. 4.3 states that a lawyer SHALL NOT state or imply that the lawyer is disinterested. If the lawyer knows or reasonably knows that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. In addition, the lawyer SHALL NOT give legal advice to unrepresented persons, other than to secure legal advice, if the lawyer knows or should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

In this situation, it might be reasonable for the attorney to believe that the supervisor is not represented if he is no longer working for a big company. We would need more facts to decide whether or not it is reasonable or unreasonable for the attorney to assume that the supervisor is unrepresented.

If the supervisor is unrepresented, then the attorney would need to make clear to him that the lawyer isn't a disinterested person, he is not the supervisor's attorney, and that he cannot give the supervisor legal advice other than to suggest retaining counsel. If any of this is misunderstood, the lawyer will need to take reasonable steps to correct the misunderstanding.

If the supervisor is represented either individually or by a company, the attorney needs to talk to the supervisor's attorney in order to speak with him about the situation at hand. If it is not in regards to this subject, the attorney doesn't need the approval. If the attorney won't let you speak to the supervisor, it might be necessary to obtain a court order allowing you to speak to the supervisor. It is likely that you will be allowed to depose them because they may have relevant information in regard to the employment discrimination case because he worked with your client.

Comment 7 of rule 4.2 states that the consent of an organization's lawyer is NOT required for

communication with a former constituent. Therefore, if the former supervisor is unrepresented, I may speak with him as long as I follow rule 4.3. Even if he is represented, the attorney may ask his attorney if he may speak with the supervisor.

If the supervisor is represented and the attorney doesn't get the consent of his attorney if he are represented, then he will be subject to discpline under 8.4 for violating the rules of professional misconduct. However, if the supervisor is unrepresented then the attorney would need to follow the rules of 4.3 to avoid disciplinary actions.

11

Excellent answer

Answer-to-Question-4

Can you represent the class action?

In deciding whether or not you can represent these clients, there are a number of factors to look at.

A. For past clients you look at Rule 1.7 then 1.9.

Rule 1.7 is conflict of interest: current clients. It states that a lawyer SHALL NOT represent a client if the rep involves concurrent conflicts of interest unless it meets an expection. Because this does not involve two current clients, you move on to 1.9. 1.9 advises you on your duties to former clients. You SHALL NOT after representing one client represent another client in the same or substantialy related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing. Informed consent denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate info and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. If you obtain CYFD's informed consent, then you might be able to represent the new clients if there are no other exceptions.

1.9(b) also applies because you SHALL NOT knowingly represent a person in the same or substantially related matter in which a firm (CYFD's office) with which the lawyer formerly was associated had previously represented a client (the state) who interests are materially adverse to that person and about whom the lawyer had acquired info protected by rules 1.6 and 1.9(c). I would argue that this is a substantially or similarly related matter because it is involving exactly what the lawyer fought for at CYFD. The attorney could obtain CYFD's informed consent (defined above) in writing to override this objection.

1.9(c) would not allow the lawyer to use any of the information/knowledge he gained while

working at CYFD against CYFD in this lawsuit if he were to represent the client.

Based on the analysis, it is unlikely that CYFD will give their informed consent to use the info/knowledge that the attorney gained while working at CYFD to be used against CYFD in a lawsuit. If however, they give their informed consent in writing, you would be able to represent them if no other issue arose.

After dealing with the conflict issues, you must also decide under rule 1.1 whether you can competently represent these clients based on your knowledge of the lawsuit. If you have overcome all of the conflict problems, but you feel as though you cannot competently represent these clients, then you cannot represent them.

B. For lawyers moving firms you look at rule 1.7 then 1.10.

Rule 1.7 is conflict of interest: current clients. It states that a lawyer SHALL NOT represent a client if the rep involves concurrent conflicts of interest unless it meets an expection. Because this does not involve two current clients, you move on to 1.10. Rule 1.10 deals with the imputation of conflicts of interest. Because this deals more with the firms ability to represent the client, it will be discussed in the next section.

C. For lawyers moving from government jobs you look at rule 1.7 then 1.11.

Rule 1.7 is conflict of interest: current clients. It states that a lawyer SHALL NOT represent a client if the rep involves concurrent conflicts of interest unless it meets an expection. Because this does not involve two current clients, you move on to 1.11. Rule 1.11 deals with special conflicts of interest for former and current gov officers and employyes (A)(2) applies here because you can't participate if you participated personally and substantially as a public officer or employee unless you get the gov's informed consent in writing.

Again, it is unlikely that CYFD will give its informed consent to allowing one of its former employees to help in suing them in a case that they worked on substantially. However, if he were able to obtain their informed consent in writing, he would be able to represent the new clients unless some other rule would be violated.

After dealing with the conflict issues, you must also decide under rule 1.1 whether you can competently represent these clients based on your knowledge of the lawsuit. If you have overcome all of the conflict problems, but you feel as though you cannot competently represent these clients, then you cannot represent them.

Rule 1.6 would come into play as well because the lawyer is now allowed to discuss or use to confidential information he knows from his previous work.

Ultimately, even if the lawyer were somehow able to obtain the informed consent of CYFD in writing, I do not think that the attorney would be able to competently represent the current clients based on his substantial involvement in the previous cases.

9

Can your firm represent the class action?

I would look at rules 1.10, 1.18, and 1.11 to analyze this decision.

Under rule 1.10 I would look at (a)(1) which says that none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so unless the prohibition is based on a personal interest of the prohibited lawyer and doesn't present a significant risk of materially limiting the rep of the client by the remaining lawyers in the firm.

Under this, the firm would probably be able to represnet the new clients because based on the facts, it doesn't appear as though the attorney has discussed his time at CYFD or his cases with anyone in the firm. If he had discussed his cases, then the firm would probably be disqualified from representing the new clients. Further, this appears to be based on a personal interest because one of the people being sued is one of the attorneys good friends.

Next I would look at Rule 1.18--duties to prospective clients. The firm must be able to competently represent these clients. From the facts given, it doesn't appear as though anything in rule 1.18 would be violated because CYFD was not a former client of the firm, rather it was a client of just one lawyer that can be screened out. 1.0 defines screened isolating the lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonable dequate under the

circumstances to protect info the isolated lawyer is obligated to protect.

I would then look at rule 1.11(b)(1) and (2). The firm would need to screen the disqualified lawyer and they would have to give written notice to CYFD. As long as this was done, it would probably be ok for the firm to represent the new clients.

After dealing with the conflict issues, the firm must also decide under rule 1.1 whether they can competently represent these clients in lawsuit. If they have overcome all of the conflict problems, but they feel as though they cannot competently represent these clients, then they cannot represent them.

However, I think ultimately the firm would be allowed to represent the clients as long as all of the above restrictions are put in place because it doesn't appear that the other attorneys know specifics about the other attorney's work. (If they did know specifics, then the outcome would be different.)

Answer-to-Question-5

Bringing the Claim

One of the issues implicated in this fact patter is rule 3.1--not bringing meritorious claims and contentions. In order for you to bring this claim, there must be a basis in law and fact for doing so that is not frivolous. If the breach of contract claim is marginal, then you probably have to bring the claim because you don't think it is frivolous. An action is not frivolous even though you believe that the client's position ultimately will not prevail.

+3

+2

However, if you actually believe that the lawsuit is frivolous, then you will be subject to discpline under 8.4 for violating the rules of professional responsibility.

+2

Rule 3.3 might also come into play because you cannot argue to the court that you believe this to be a valid claim if you don't actually believe that. You wouldn't be following the rule of candor to the tribunal.

Rule 4.4 comes into play based on Sara's statements that she knows John cannot afford an attorney and will be force to sell a piece of property to settle the claim. The rule provides that you shall not use means that have no substantial purpose other than to embarrass....or burden a 3rd party. It appears as though a big part of why Sara is bringing this lawsuit is because John has a piece of property that she wants. If you believe that this lawsuit is frivolous and you bring it, you would be violating the rule because requiring him to settle the claim has no substantial purpose other than to burden him.

+1

You would also probably be violating rule 4.1--truthfulness to others because you know this is a frivolous claim and thus you will be making false statements of material facts or law to John because in actuality the claim has no basis in law.

Payment Issue

Your own monetary or proprietary interests can NOT be the reason you bring a lawsuit. Therefore, just because you might want this property interest or 1/3 of the cost of it, you still can't bring a frivolous claim.

+1 Rule 1.5 governs fees. Comment 4 discusses terms of payment. It states that you may accept property in payment for services, providing that this doesn't involve acquisition of a proprietary interest in the cause of action or subject matter of the litgation contract to rule 1.8(i). Rule 1.8(i) states the same thing as above except that the lawyer may obtain a lien (which is not the case here) and they can contract with the client for a reasonable contingent fee in a civil case.

If you were to accept this form of payment, it might be ok because it is not what is at issue in this case. The breach of contract based on a coal-fired pizza oven. You would not be able to obtain interest in the oven, but you may be able to accept payment as property because of the rule and comment discussed above.

Contingency fees must be reasonable. Most jurisdictions allow for a 1/3 recovery in contingent cases. Because this is not a domestic relations or criminal case, a contingency fee would be appropriate. If they were to enter into this agreement, under rule 1.5, the client must be clearly notified of any expenses for which they will be liable for whether or not the client is the prevailing party.

You would need to make sure that 1/3 of the sale of the property would be a reasonable amount based on what you are doing. If the place sells for $100 million, it's probably not reasonable for you to receive 1/3 of that based on this case.

+1 In regards to the proprietary interest, rule 1.8 may come into play because it sets out the rules for entering a business transaction with a client or acquiring ownership, possessory, security, or other pecuniary interest adverse to the client. However, because the proprietary interest is for payment, this rule probably does not apply because it is payment rather than a business transaction. 1.8(i)

10

Conclusion

I would ultimately say that the claim should not be brought because it would violate rule 3.1. The payment then becomes a moot point, but if for some reason you decided to pay the claim, the payment would be allowed.

I would also say that you would be violating 1.1 if you brought this because you can't competently defend a claim or represent a client when you believe that the lawsuit is completely frivolous and without merit.

Answer-to-Question-6

Judge's Misconduct

Under rule 8.3(b), a lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office SHALL inform the appropriate authority. Comment 2 says that a report about misconduct is not required where it would involve violation of 1 6, but that the lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests

In this case, it is likely that you will be able to persuade Jose to allow you to disclose this information becasue it won't substantially prejudice his interests (unless Judge Roybal is assigned to his case, in which you could disqualify him as the judge because an attorney can disqualify one judge in a case without reason. Further, Judge Roybal would have to recuse himself in this instance if these allegations are made against him.)

This seems pretty straightforward, but it should be cautioned that reporting something like this without substantiating the claim would be incredibly detrimental to the judge's reputation and career. Based on the facts, there is not enough information to determine whether Jose is an upstanding, believable character. His criminal troubles are pretty mundane (unless the reckless driving was for a DUI or a similar charge). Reckless driving could be something as simple as speeding and going 50 in a 40. These charges don't paint Jose out as a criminal. Further, it should be noted that he came to an attorney about this rather than just taking the deal!

Comment 3 of 8.3 says that a measure of judgment is required in complying with the rules. It says that substantial refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. In this situation, a judge that accepts bribes is a very serious offense. If a judge is

accepting bribes for making cases "disappear," then all of his judgments are subject to scrutiny. I would argue that because this is such a serious offense, you would be required under rule 8.3 to report this misconduct.

Sam's statements

Since you do work for ABC, they might be using your services to further a crime or fraud. He implied in his statement that someone in the court is being bribed so that they can maintain these lucrative contracts.

Rule 1.6 would come into play because a lawyer may reveal information relating to the representation of a client to the extent that the lawyer reasonably believes necessary to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commmission of a crime or fraud in furtherance of which the client has used the lawyer's services.

It is unclear from the facts at hand whether this is the case, but if it can be shown that ABC used your services somehow to carry this out, then you may disclose this information to the appropriate authorities. This is financially impacting the public because other companies are losing out on the opportunity to provide paper to the courthouse because the court is being bribed.

Since you are representing ABC, rule 3.3 is involved because you shall not knowingly lie or allow your client to lie to the court. If you are representing them on some matter that involves the court and paper, then you now will be allowing them to make false statements or offering false evidence because you know they are bribing someone at the court.

You would need to be able to prove that they used your services to commit this crime. Otherwise, you can't report them just because they did something illegal. Even if you never represented them regarding this matter, they are your client, and you cannot report illegal behavior unless it falls within one of the descriptions in 1.6.

Your best course of action would be to withdrawal as ABC's attorney for any further actions and

any current actions you are in pursuant to rule 1.16. As long as your withdrawal can be accomplished without a material adverse effect on the interests of the client, you may withdrawal because the client insists upon a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fradulent; the client has used your services to perpetuate a crime, or for other good cause that exists. Further, you must withdrawal if the representation will result in violation of the rules of professional conduct or law.

Conflicts

There might also be a conflict of interests issue as well in regards to Sam's statements. You can't use your knowledge of facts from one client against another client if that is going to adversely affect them. If Jose wants you to represent him in a case in conflict with ABC, you probably would not be able to do this. However, since this is a criminal matter separate from ABC, you would be allowed to represent him in this claim.

Conclusion

Ultimately, I would report the judges misconduct, and I would most likely wouldn't report Sam's statements based on the above analysis.

However, if I decide through my interpretation of the rules that in fact there is financial injury to someone through the use of my services, then I would be permitted to report them. But, just because your client does something illegal doesn't mean that you can report them (seen in the first day of class in the 26 years in jail movie). From the facts, there is nothing to indicate that they used my services explicitly to commit the crime or fraud. If that is the case, then I cannot report them. My advice would be to withdrawl from any further representation of ABC immediately!

10

Answer-to-Question-Maureen's Bar Tips

Duty, Breach, Causation, Damages!!